

**MEMORANDUM**

TO: County Council

FROM: *AM* Amanda Mihill, Legislative Analyst  
*MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 39-07, Agricultural Land Preservation - Amendments

Bill 39-07, Agricultural Land Preservation - Amendments, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on December 11, 2007. A public hearing is tentatively scheduled for January 15 at 1:30 p.m.

Bill 39-07 would conform County law concerning the purchase of agricultural easements to the requirements of State law and amend County law governing the purchase of agricultural easements.

This packet contains

Bill 39-07  
Legislative Request Report  
Memo from County Executive

Circle

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Bill No. 39-07  
Concerning: Agricultural Land  
Preservation – Amendments  
Revised: 12/5/2007 Draft No. 2  
Introduced: December 11, 2007  
Expires: June 11, 2009  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch.     , Laws of Mont. Co.     

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN ACT** to:

- (1) conform County law concerning the purchase of agricultural easements to the requirements of State law; and
- (2) generally amend County law governing the purchase of agricultural easements.

By repealing

Montgomery County Code  
Chapter 2B Agricultural Land Preservation  
Section 2B-1 through and including 2B-19

and re-enacting

Montgomery County Code  
Chapter 2B Agricultural Land Preservation  
Section 2B-1 through 2B-17

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1       **Sec. 1. Sections 2B-1, through 2B-19 are repealed as follows:**

2                   **[ARTICLE 1. GENERAL PROVISIONS.]**

3       **[2B-1. Definitions.]**

4       [(a) In this chapter, the following words and phrases shall have the  
5           meanings respectively ascribed to them by this section:

6           *Agricultural board:* The agricultural preservation advisory board.

7           *Agriculture:* The science or art of cultivating and managing the soil,  
8           growing and harvesting crops and other plants, forestry, horticulture,  
9           hydroponics, breeding or raising livestock, poultry, fish, game, and  
10          furbearing animals, dairying, beekeeping, similar activities, and  
11          primary processing on the farm of an agricultural product in the  
12          course of preparing it for market. This may or may not cause a change  
13          in the natural form or state of the product, but it does not entail  
14          operations of a commercial or industrial character that must be  
15          regulated so as to preclude adverse external impacts.

16          *County agricultural district:* An agricultural district that the council  
17          approves.

18          *Easement:* A covenant running with the land which limits the use  
19          permitted on the property to agricultural and other uses as specified in  
20          this chapter.

*Foundation:* The Maryland Agricultural Preservation Foundation.

*Fund:* The county agricultural land preservation fund.

*Landowner:* A person or corporation owning or having an interest in land situated within a state or county agricultural district or proposed to be so situated.

*Planning board:* The county planning board for Montgomery County.

*Productive agricultural land:* Land determined to be eligible to be included in a state agricultural district in accordance with regulations promulgated by the foundation.

*State agricultural district:* An agricultural district established under subtitle 5 of title 2 of the Agricultural Article of the Annotated Code of Maryland.

(b) In this chapter, the following words and phrases have the meanings set forth in subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland:

- (1) Allocated purchases;
- (2) County;
- (3) Eligible county;
- (4) General purchases of easements;
- (5) Matching purchases of easements; and

41 (6) Total amount to be allotted.]

42 **[2B-2. Agricultural preservation advisory board; establishment; membership;**  
43 **terms of office; duties and responsibilities.]**

44 [(a) *Generally.* The agricultural preservation advisory board operates  
45 under state law to perform the duties and responsibilities set forth  
46 below.

47 (b) *Composition.* The agricultural board consists of five (5) -members  
48 appointed by the county executive and confirmed by the county  
49 council. Three (3) must be owner-operators of commercial farm land  
50 earning fifty (50) percent or more of their income from farming. All  
51 members of the agricultural board must be residents of Montgomery  
52 County.

53 (c) *Terms of office.* The original members must be appointed as follows:  
54 One (1) member must be appointed to a term of three (3) years; two  
55 (2) members must be appointed to terms of four (4) years; and two (2)  
56 members must be appointed to terms of five (5) years. Thereafter, the  
57 terms of office are for five (5) years. A member may not serve more  
58 than two (2) successive full terms. Appointment to a vacancy must be  
59 for the remainder of the unexpired term. Members must not be

60 compensated for their services, but may be reimbursed for necessary  
61 expenses.

62 (d) *Duties and responsibilities.* The agricultural board is assigned the  
63 following duties and responsibilities as provided under subtitle 5 of  
64 title 2 of the Agriculture Article of the Annotated Code of Maryland:

65 (1) To advise the county governing body with respect to the  
66 establishment of state and county agricultural districts and the  
67 approval of purchases of easements by the foundation within  
68 the county;

69 (2) To assist the county governing body in reviewing the status of  
70 state and county agricultural districts and land under easement;

71 (3) To advise the foundation concerning county priorities for  
72 agricultural preservation;

73 (4) To promote preservation of agriculture within the county by  
74 offering information and assistance to farmers with respect to  
75 establishment of state and county agricultural districts and  
76 purchase of easements; and

77 (5) In addition to those duties prescribed by state law, the board  
78 should:

- 79                   a.     Delineate areas of productive agricultural land in the  
80                             county.
- 81                   b.     Recommend to the county executive procedures for  
82                             mediation or arbitration of disputes as to values of  
83                             easements being considered for purchase by the county.
- 84                   c.     Review and make recommendations to the governing  
85                             body on regulations proposed for state and county  
86                             agricultural districts, and perform other duties as may be  
87                             assigned by the county council or county executive.
- 88                   d.     Prepare and/or review recommendations to the governing  
89                             body with regard to county policies and programs for  
90                             agricultural preservation.
- 91                   e.     Cooperate with the planning board, the cooperative  
92                             extension service and the soil conservation district in  
93                             carrying out its responsibilities.]

94     **[2B-3. State agricultural districts; procedures for establishment.]**

- 95             [(a)   The procedures provided under subtitle 5 of title 2 of the Agriculture  
96                     Article of the Annotated Code of Maryland must be followed with  
97                     regard to the review of petitions to establish state agricultural districts  
98                     and the recommendation of the county council to the foundation. The

recommendation of the council to the foundation must be by resolution.

(b) Other agricultural land may be added to a state agricultural district provided the owner applies for the land to be included, the state district meets acreage requirements without inclusion of such land, and each parcel is at least five (5) acres.

(c) State districts may be established within the ten-year water and sewerage envelope of Montgomery County only if the land is outstanding in productivity and is of significant size.]

**[2B-4. Activities and land uses permitted in state districts.]**

[(a) Permitted uses. Notwithstanding any other provisions of this Code, the following activities are permitted in districts in conformance with the county policy that agriculture be the preferred land use in districts:

- (1) Any agricultural use of land.
- (2) Operation at any time of any machinery used in farm production or the primary processing of agricultural products.
- (3) All normal agricultural operations performed in accordance with good husbandry practices which do not cause bodily injury or directly endanger human health.



118           (4)   Sale of farm products produced on the farm where such sales  
119                   are made.

120       (b)   Land uses not permitted in districts.

121           (1)   Subdivision or use for residential, commercial or industrial  
122                   purposes is not permitted within agricultural districts; provided,  
123                   however, upon written application to the foundation,  
124                   conveyance of one (1) acre for the landowner and one (1) acre  
125                   for each child of the person owning the land at the time the land  
126                   enters into a district shall be permitted for the construction of  
127                   the principal residence for the grantee or child and does not  
128                   constitute residential subdivision for commercial purposes. A  
129                   landowner within a district may also construct housing for  
130                   tenants fully engaged in operation of the farm; provided that, in  
131                   no case shall the average density of tenant housing exceed one  
132                   (1) house for each one hundred (100) acres of land in the farm.

133           (2)   Public access or use is not granted by virtue of purchase of an  
134                   easement by the foundation or the county unless specifically  
135                   provided for in the easement contract.

136           (3)   Condemnation of any land within a district for public use shall  
137                   not occur unless other reasonable alternatives do not exist.

(c) Enforcement of regulations.

(1) The Department of Permitting Services enforces this Chapter and any regulations adopted to implement this Chapter.

(2) If, in the enforcement of regulations adopted pursuant to this Chapter, conflict occurs between County laws or regulations concerned with land use, economic activity, noise and environmental controls and regulations adopted pursuant to this Chapter, the agricultural district regulations shall supersede such other conflicting regulations.

(d) Appeals. An aggrieved individual may file an appeal to the County Board of Appeals within 30 days after a decision of the Director of Permitting Services made under this Section.]

**[2B-5. Agricultural easements.]**

[(a) Purchase of easements by the foundation.

(1) The purchase of easements by the state of either general or matching allotted purchases is governed by, subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland.

(2) Agricultural easements must be recorded in the land records of the county; provided, that recordation of an agricultural easement is not subject to any local transfer tax.

(b) Additional county payment. If the foundation purchases an easement on land in a state agricultural district, the county may make an additional payment to the landowner of up to fifteen (15) percent of the price of the easement. The county executive must annually establish the percentage used to determine the payment.]

**[2B-6. Termination of state easements.]**

[Termination of easements purchased in full or in part with state funds must comply with subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland.]

**[ARTICLE 11. PURCHASE OF EASEMENTS BY THE COUNTY.]**

**[2B-7. Eligible land.]**

[(a) The county may purchase an easement under this article on land:

- (1) Without establishment of a county agricultural district if it is zoned Rural, Rural Density Transfer, or Rural Cluster; or
- (2) That is in a county or state agricultural district.

(b) The county may not purchase an easement under this article on land on which further development is already precluded.

(c) An owner of land subject to a county easement under this article that is not located in a county agricultural district has the same rights and

is subject to the same restrictions as an owner of land located in a county agricultural district.]

**[2B-8. Approval of county agricultural districts.]**

[(a) Land in a county district must:

- (1) Include at least fifty (50) contiguous acres;
- (2) Meet USDA soil classification standards I--III or woodland classifications 1 and 2 on at least fifty (50) percent of the acreage; and
- (3) Lie outside water and sewer categories 1, 2, and 3. However, the council may establish a county district that includes other land if the council decides it has significant agricultural value and, after considering the recommendation of the master plan for the area, determines that it is in the public interest to establish the county district.

(b) The council may establish conditions to its approval of a county district that it considers in the public interest.]

**[2B-9. Procedures to establish a county agricultural district.]**

[(a) The council may establish by resolution one (1) or more county agricultural districts.

- 196 (b) At the request of an owner of agricultural land, the agricultural board  
197 may recommend that the council establish a county agricultural  
198 district or include the owner's land in a county agricultural district.
- 199 (c) Upon receipt of a request from an owner to establish a county district,  
200 the agricultural board must notify any adjacent property owner of the  
201 request and of applicable approval procedures. An adjacent property  
202 owner must be notified, in writing, of any public hearing on the  
203 request.
- 204 (d) Within sixty (60) days after receiving a request, the agricultural board  
205 must forward a written recommendation to the council. This  
206 recommendation may be to:
- 207 (1) Approve;
  - 208 (2) Deny; or
  - 209 (3) Recommend modification of the request.
- 210 (e) Upon receipt of a request of an owner to establish a county district,  
211 the agricultural board immediately must forward a copy of that  
212 request to the planning board for review. The planning board must  
213 submit written comments to the council within thirty (30) days after  
214 receiving the agricultural board's recommendation on the request. The

215 planning board's period for comment may be extended for up to  
216 fifteen (15) days.

217 (f) Within sixty (60) days after receiving comments from the planning  
218 board, the council must act on the request.

219 (g) (1) After receiving the recommendations, the council must hold a  
220 public hearing on the request unless it waives this requirement.

221 (2) The council may extend the period of action by up to one  
222 hundred twenty (120) days.

223 (3) If the council takes no action within the applicable time period,  
224 the request is denied.

225 (h) The council may not include a landowner's property in a county  
226 district without the landowner's consent.]

227 **[2B-10. Procedures to terminate a county agricultural district.]**

228 [A landowner may withdraw from a county district by giving notification in  
229 writing to the agricultural board and the county council:

230 (a) No earlier than five (5) years from the date the council includes the  
231 owner's land in the district; or

232 (b) After the county has rejected the purchase of an easement on the  
233 landowner's property.

234 In a county district that contains land from more than one (1) landowner, if a  
235 landowner's withdrawal from the district causes the district no longer to meet  
236 requirements for a county district, the council may reevaluate the district after  
237 receiving the recommendations of the agricultural board and the planning board.]

238 **[2B-11. Use of land in a county agricultural district.]**

239 [(a) Except as prohibited by the zoning ordinance, these activities are  
240 permitted in a county district:

- 241 (1) Any agricultural use of land;
- 242 (2) Operation of any machinery used in farm production or the  
243 primary processing of agricultural products, regardless of the  
244 time of operation;
- 245 (3) All normal agricultural operations, performed in accordance  
246 with good husbandry practices, that do not cause bodily injury  
247 or directly endanger human health; and
- 248 (4) Operation of a wayside stand for sale of farm products.

249 (b) Subsection (a) does not alter the special exceptions applicable to the  
250 zone in which the county district is located under the zoning  
251 ordinance.

(c) A person who owns land that the council has included in a county district must not use or subdivide the land for residential, commercial, or industrial uses. However, a grantor may use no more than:

(1) One (1) acre, or the minimum lot size required by the zoning and health regulations, whichever is greater, to build a house for use by the grantor;

(2) One (1) acre, or the minimum lot size required, whichever is greater, to a maximum density of not more than one (1) house per twenty-five (25) acres for each house built, to be occupied by an adult child of the grantor, to a maximum of ten (10) children; and

(3) The acreage needed to construct housing for tenants fully engaged in the operations of the farm, not to exceed one (1) tenant house per one hundred (100) acres. The owner or the owner's child must not further subdivide the parcel on which the house is built. The land on which a tenant house is constructed must not be subdivided or conveyed to any person. The tenant house must not be conveyed separately from the original parcel.]

**[2B-12. Purchase and value of easements.]**



272 [(a) The county agricultural land preservation fund is created as a special,  
273 nonlapsing revolving fund for agricultural land preservation purposes.

274 It consists of:

- 275 (1) The county's share of the state agricultural transfer tax;  
276 (2) Easement repurchases and reimbursements; and  
277 (3) Any other available monies for the purchase of easements under  
278 this article.

279 (b) Monies from the county's share of the state agricultural' transfer tax  
280 and any revolving funds must be used for the purposes of this chapter  
281 before the expenditure of any other funds.

282 (c) The county may purchase an easement on real property to preserve  
283 agricultural land in the county. To purchase an easement, the county  
284 may use:

- 285 (1) Negotiations;  
286 (2) Competitive bidding; or  
287 (3) Any other method that is fair and equitable to the owners of  
288 agricultural land.

289 (d) The purchase price may be based on an appraisal or any other  
290 evidence of value of the easement that the county is receiving.

291 (e) Priority for purchasing easements should be based on:

- (1) Price;
- (2) Whether the land is designated in the master plan as agricultural;
- (3) Whether the land borders a municipality or other developing area; and
- (4) Other factors the county executive determines are needed to preserve agricultural land.

(f) The county may, in writing, agree to purchase an easement subject to the condition that an owner;

- (1) Make a good-faith application to the foundation for the purchase of an easement by the state; and
- (2) Accept any foundation offer if its price is equal to or higher than the agreed county price. If the foundation does not agree to purchase an easement subject to a conditional agreement under this subsection, the county must purchase it at the agreed price and may make an additional payment to an owner whose application has been rejected by the foundation in order to compensate for any delay in the state application process that is beyond the control of the applicant. This additional payment

should be determined based on an appropriate inflation index,  
the rate of return, or other relevant factors.

(g) Consistent with this article, the county may establish appropriate terms and conditions for any agreement to purchase an easement or the easement itself. The county may limit the right of the grantor or any successor in interest to apply for a special exception that is inconsistent with the purpose of this article.

(h) In addition to its authority to purchase easements under this article, the county may accept the donation of an easement or other interest in property for agricultural land preservation purposes.]

**[2B-13. Termination and repurchase of easements.]**

[(a) (1) Not earlier than twenty-five (25) years after the county has purchased an easement, an owner may, in writing, ask the county to terminate the easement. Termination may be requested earlier only if the district council zones the land subject to easement in a manner that precludes agricultural uses as a matter of right.

(2) The council must hold a public hearing within ninety (90) days after receiving a request to terminate an easement unless it waives that requirement. The council must request the advice of

the agricultural board and the planning board and notify all people who own land adjacent to the land on which the easement is located.

(3) Within one hundred eighty (180) days after receiving a request to terminate an easement, the council must decide whether to terminate the easement. The council may extend the time for this decision by not more than ninety (90) days.

(4) Before granting the request, the council must find that the land is no longer suitable for agriculture and that the public interest would be best served by terminating the easement.

(5) Within one hundred eighty (180) days after the council agrees to terminate the easement, an owner may repurchase the easement by paying to the fund the difference between the fair market value and the agricultural value of the land, as determined by an appraisal.

(b) If land under easement is purchased or condemned by the county for park or other nonagricultural uses, the county must transmit funds equal to the present value of the easement to the fund.

349 (c) An owner who builds a house under section 2B-11(b) of this article  
350 must reimburse the fund the pro rata amount that the county paid for  
351 the easement on that land.]

352 **[2B-14. Right to sell.]**

353 [This article does not restrict the right of an owner to sell land located in a  
354 county agricultural district or land on which the county holds an easement.]

355 **[2B-15. Public access.]**

356 [Purchase of an easement by the county does not create a right of public  
357 access to the land unless the easement contract specifically provides for public  
358 access.]

359 **[2B-16. Easements on county-owned farmland.]**

360 [(a) Productive agricultural lands sold by the county must be sold with an  
361 easement attached where the easement is consistent with the general  
362 plan of Montgomery County as amended by applicable master plan.

363 (b) Productive agricultural lands purchased by the county in pursuit of  
364 farmland preservation goals may be resold only for private  
365 agricultural uses and subject to an easement.]

366 **[2B-17. Recordation.]**

367 [The county must record an easement in the land records of the county. The  
368 recordation of an easement is not subject to any county transfer or recordation tax.]

369 **[2B-18. Executive regulations.]**

370        [(a) Within four (4) months after this article becomes effective, the county  
371                executive must adopt regulations under method (1) to implement this  
372                article.

373        (b) The regulations must include:

374                (1) Method of easement valuation;

375                (2) Method of purchasing easements;

376                (3) Terms of payment for easements; and

377                (4) Method of ranking offers to sell easements.]

378 **[2B-19. Administration and conflict.]**

379        [(a) The funds to administer any agricultural land preservation program  
380                may be paid from the fund and any other monies the Council  
381                appropriates.

382        (b) The Department of Economic Development must administer this  
383                Article and the regulations under it.

384        (c) The Department of Economic Development must issue a public  
385                annual report on this program.

386        (d) (1) If a conflict occurs between the provisions of this Article and  
387                County laws on economic activity, noise, or environmental  
388                controls, this Article supersedes the conflicting laws.

(2) If a conflict occurs between the enforcement of regulations adopted under this Article and County regulations on economic activity, noise, or environmental controls, the regulations adopted under this Article supersede the conflicting regulations.]

**Sec. 2. Sections 2B-1 through 2B-17 are re-enacted as follows:**

**ARTICLE 1. GENERAL PROVISIONS.**

**2B-1. Definitions.**

In this Chapter, the following words and phrases have the meanings indicated:

**Agricultural Board** or **APAB** means the Agricultural Preservation Advisory Board.

**Agricultural Easement** means a covenant running with the land that restricts the uses permitted on the property to agricultural and other uses as specified in this Chapter.

**Agriculture** means:

(1) the business, science, and art of cultivating and managing the soil;

(2) composting, growing, harvesting, and selling crops and livestock, and the products of forestry, horticulture, and hydroponics;

(3) breeding, raising, or managing livestock, including horses, poultry, fish, game, and fur-bearing animals, dairying, beekeeping and similar activities; and

(4) equestrian events and activities.

**Agriculture** includes processing on the farm of an agricultural product in the course of preparing the product for market and may or may not cause a change in the natural form or state of the product.

**Agriculture Article** means the Agriculture Article of the Maryland Code.

**Farm Market** means the display and retail sale from a farm of agricultural products produced:

(1) on the farm where the farm market is located; or

(2) on another farm under the control of the owner or operator of the farm market.

**A farm market** includes the display and sale of farm food products certified as non-potentially hazardous by the Department of Health and Human Services.

**Foundation** means the Maryland Agricultural Land Preservation Foundation.

**Fund** means the County's Agricultural Land Preservation Fund.



**Landowner** means a fee simple owner of land located in the State or the County on which a landowner proposes to sell or has sold an agricultural easement to the State or the County.

**Planning Board** means the Montgomery County Planning Board.

**Principle Dwelling** means a residential structure on farm property serving as the property's primary residence.

**Productive agricultural land** means land eligible to be included in an agricultural easement under County or Foundation regulations.

**Significant agricultural resource or significant agricultural capability** means land which, if properly agronomically managed and under normal growing conditions, the Department of Economic Development, after consulting local agricultural support agencies, finds can sustain a profitable farm enterprise.

**State agricultural easements** means easements established under Subtitle 5 of Title 2 of the Agricultural Article.

**Tenant house** means a residential structure on land under an agricultural easement that serves as an accessory use to the principle dwelling.

**2B-2. Agricultural Preservation Advisory Board; establishment; membership; terms of office; duties and responsibilities.**

446 (a) Generally. The Agricultural Preservation Advisory Board is  
447 established under Subtitle 5 of Title 2 of the Agriculture Article.

448 (b) Composition.

449 (1) The County Executive must appoint, subject to confirmation by  
450 the County Council, 5 members to the APAB.

451 (2) 3 members must be owner-operators of commercial farm land  
452 and earn at least 50% of their income from farming.

453 (3) Each member must be a resident of the County.

454 (c) Terms of office.

455 (1) The term of each member is 5 years.

456 (2) A member must not serve more than 2 consecutive full terms.  
457 An appointee to fill a vacancy before a term expires serves the  
458 rest of the unexpired term.

459 (3) A member serves without compensation. However, a member  
460 may request reimbursement for mileage and dependent care  
461 costs at rates established by the County.

462 (d) Duties and responsibilities.

463 (1) As required by Subtitle 5 of Title 2 of the Agriculture Article,  
464 the APAB must:

- 465           (A) advise the County on the purchase of State and County  
 466               agricultural easements;
- 467           (B) assist the County in reviewing the status of agricultural  
 468               land, including farming productivity under State and  
 469               County agricultural easements;
- 470           (C) advise the Foundation concerning County priorities for  
 471               agricultural preservation; and
- 472           (D) promote preservation of agriculture in the County by  
 473               offering information and assistance to landowners on the  
 474               purchase of State and County agricultural easements.
- 475       (2) The APAB may:
- 476           (A) delineate areas of productive agricultural land in the  
 477               County;
- 478           (B) recommend to the Executive procedures to mediate or  
 479               arbitrate disputes on the value of agricultural easements  
 480               which the County may buy;
- 481           (C) review and make recommendations on regulations  
 482               regarding State and County agricultural easements;
- 483           (D) recommend County policies and programs to preserve  
 484               agriculture;

(E) cooperate with the Planning Board, the Cooperative Extension Office and the Soil Conservation District in carrying out its responsibilities; and

(F) perform other duties the County Executive assigns.

## **ARTICLE 2. STATE EASEMENTS.**

### **2B-3. State Easement Application and Purchase Guidelines.**

(a) A landowner seeking to place land under an agricultural easement must file a petition with the APAB requesting an application for the purchase of an easement by the Foundation.

(b) The APAB must advise the County whether the applicant's land meets the qualifications established by the Foundation and recommend whether the Foundation should buy an agricultural easement.

(c) The APAB must refer the application to the Planning Board. The Planning Board must advise the County if:

(1) the proposed agricultural easement is compatible with existing and approved County plans and overall policy; and

(2) the Planning Board recommends buying an agricultural easement on the applicant's land.

(d) If either the APAB or the Planning Board recommends approval, the County Council must hold a public hearing on the proposed easement.

Adequate notice of the hearing must be given to the owner of any land adjacent to the proposed agricultural easement.

(e) The Council must decide if the application for the proposed agricultural easement should be recommended to the Foundation for approval.

(1) If the Council recommends approval of the application, the Council must notify and forward to the Foundation its recommendation and relevant information about the proposed easement, including the recommendations of the APAB and the Planning Board.

(2) If the Council recommends denial of the application, the Council must notify the Foundation and the landowner of its decision.

(f) The Foundation may approve an application for a proposed agricultural easement only if:

(1) The land in the proposed agricultural easement meets the following qualifications established by the Foundation:

(A) any productivity, acreage, and locational criteria necessary to continue farming.

(B) the land must be at least 50 acres.

(C) any other eligibility requirement in Subtitle 5 of Title 2  
of the Agriculture Article;

(2) The Council recommended approval of the proposed easement;

(3) A majority of the Foundation's Board of Trustees approves  
buying the proposed easement.

(g) Additional County payment. If the Foundation buys an agricultural  
easement, the County may make an additional payment to the  
landowner of up to 15% of the State's purchase price of the easement  
under regulations issued under this Chapter. The Executive must  
specify the percentage used to determine the payment each year and  
publish that number in the County Register.

(h) Procedures.

(1) The procedures governing State agricultural easements,  
including the application process, the maximum value of any  
easement bought, the source of funds to buy an easement, and  
the restrictions required in easements, are contained in Subtitle  
5 of Title 2 of the Agriculture Article and the regulations issued  
under Subtitle 5 of Title 2.

(2) If any conflict arises between this Chapter and its regulations and Subtitle 5 of Title 2 and its regulations, the State law and State regulations govern.

(i) Each State agricultural easement must be recorded in the County land records. The recordation of a State agricultural easement is not subject to any County recordation or transfer tax.

**2B-4. Activities and uses permitted on land encumbered by a State easement.**

(a) Permitted uses. The following activities are permitted on land encumbered by a State agricultural easement:

(1) Any agricultural use of land;

(2) Operation at any time of any machinery used in farm production or the primary processing of agricultural products;

(3) Any normal agricultural operation performed in accordance with good husbandry practices which does not cause bodily injury or directly endanger human health; and

(4) Sale of farm products produced on the farm where the product is sold.

(b) Uses not permitted. The following activities are not permitted on land encumbered by a State agricultural easement:

(1) Subdivision or use for residential, commercial, or industrial purposes However, the Foundation may approve, after receiving a written application, the release of any easement restriction for:

(A) the landowner who originally sold the easement, to use 1 acre or less to build a dwelling house to be occupied by that landowner or a child of the landowner, up to a maximum of 3 lots, subject to the requirements in Subtitle 5 of Title 2 of the Agriculture Article; and

(B) a landowner to build housing for one or more tenants who are fully engaged in operating the farm if the landowner meets the following requirements:

(i) the use must not exceed 1 tenant house for each 100 acres, unless the Foundation allows an exception in a case of compelling need;

(ii) the land where a tenant house is located must not be subdivided or conveyed to any person;

(iii) the tenant house must not be conveyed separately from the original parcel; and



(iv) any other requirement in Subtitle 5 of Title 2 of the  
Agriculture Article.

(2) Purchase of an agricultural easement by the Foundation does  
not grant the public any right of access or right to use the land  
included under the easement.

(3) Any land encumbered by a State agricultural easement for  
public use must not be condemned for public use unless no  
other reasonable alternative is available.

**2B-5. Landowner rejection of offer to purchase easement.**

A landowner who rejects an offer by the Foundation to buy a State  
agricultural easement on the same land for 2 consecutive years, for a reason other  
than sufficient State or County funds are not available to buy the easement, must  
not reapply to sell an agricultural easement on the same land for the next 2  
consecutive years.

**2B-6. Termination of State easements.**

The Foundation and the County must approve the termination of any  
agricultural easement bought in full or in part with State funds. Any termination  
must comply with Subtitle 5 of Title 2 of the Agriculture Article. The Foundation  
must hold in perpetuity a State agricultural easement if the State Board of Public  
Works approved the purchase on or after October 1, 2004.

**ARTICLE 3. COUNTY EASEMENTS**

**2B-7. County Easement Application and Purchase Guidelines.**

(a) A landowner seeking to place land under an agricultural easement must submit an easement sales application to the Department of Economic Development. The application must include a completed property description and specify the landowner's asking price.

(b) The County may buy an agricultural easement under this Article:

(1) on land located in the Rural, Rural Density Transfer, or Rural Cluster zones; or

(2) on land located in another zone if:

(A) placing an agricultural easement on that land is in the public interest; and

(B) the Department concludes, after consulting local agricultural support agencies, that the land has significant agricultural resources.

(c) The County may not buy an easement under this Article if further development is already precluded on that land.

(d) The County may buy an agricultural easement under this Article if the land:

(1) is at least 50 contiguous acres;

(2) meets United States Department of Agriculture's soil classification standards I, II, or III, or woodland classifications 1 and 2 on at least 50% of the acreage, as outlined in the Soil Survey for Montgomery County; and

(3) is located outside water and sewer categories 1, 2, and 3 as defined in the County Ten-Year Comprehensive Water Supply and Sewerage Systems Plan.

(e) If any land does not meet all requirements of subsection (d), the County must not buy a County agricultural easement on that land unless:

(A) placing an agricultural easement on that land is in the public interest; and

(B) the Department concludes, after consulting local agricultural support agencies, that the land has significant agricultural resources.

**2B-8. Activities and uses permitted on land encumbered by a County agricultural easement.**

(a) Permitted Uses. Except as prohibited by Chapter 59 or the terms of an agricultural easement, the following activities are permitted on land encumbered by a County agricultural easement:

- (1) Any agricultural use of land;
- (2) Operation of any machinery used in farm production or the primary processing of agricultural products, regardless of the time of operation;
- (3) Any normal agricultural operation, performed in accordance with good husbandry practices, that does not cause bodily injury or directly endanger human health; and
- (4) Operation of a farm market to sell farm products under the following conditions.
  - (1) No more than 25 percent of the farm market display and sales area may be used to display and sell agricultural products not produced on the farm under the control of the owner or operator of the farm market.
  - (2) If any crop failure is due to drought, insect damage, disease, or other cause beyond the control of the owner or operator of the farm market, the Department of Permitting Services, after receiving a recommendation from the Department of Economic Development and the Agricultural Advisory Committee, may allow more than 25 percent of the farm market display and sales area to be

used for agricultural products not produced on the farm where the farm market is located for a limited period of time.

(b) Subsection (a) does not alter either the requirements in Chapter 59 for a special exception applicable to the zone where a County easement is located or the process to obtain a special exception. However, the County may limit the right of the landowner or any successor in interest to apply for a special exception that is inconsistent with the purposes of this Article.

(c) *Uses not permitted.* The following activities are not permitted on land encumbered by a County agricultural easement.

(1) Subdivision or use for any residential, commercial, or industrial purpose. However, the landowner may obtain a release from an agricultural easement for:

(A) 1 acre, or the minimum lot size required by Chapter 59 or applicable well and septic regulations, whichever is greater, to build a house for use by the landowner; and

(A) up to 3 1-acre lots, or the minimum lot size required by Chapter 59 or applicable well and septic regulations, whichever is greater, to build houses to be occupied by

adult children of the landowner at a maximum density  
determined by the size of the land under easement and  
the following calculations:

- (i) 1 lot for the first 25 acres;
- (ii) 2 lots for land under easement greater than 50  
acres but less than 120 acres; and
- (iii) 3 lots for land under easement that is greater than  
120 acres;

(2) Any release issued under this Section must include:

(A) a statement that the landowner or the child, whichever is  
appropriate, must not transfer the lot released from an  
agricultural easement for 5 years after the release is  
recorded in the County land records, unless:

- (i) the APAB approves the transfer; or
- (ii) the lot is subject to a bona fide foreclosure of a  
mortgage or deed of trust or to a deed in lieu of  
foreclosure.

(B) Noncompliance with subparagraph 2(A) is a violation of  
this Chapter and the agricultural easement, and may result  
in legal action to prevent the transfer or to obtain the

proceeds of any sale collected by the landowner or the child if an unapproved transfer occurs.

(3) If land proposed for an agricultural easement does not contain a habitable dwelling house, the landowner of the proposed agricultural easement may, as part of the application, request the right, which would run with the land, to build 1 single family dwelling house if:

(A) No viable residential structure exists on the land when the easement is bought;

(B) The agricultural easement requires that the residential structure must never be subdivided from the easement property; and

(C) The agricultural easement requires that the right to build a single family dwelling precludes the release of any lot from the easement for the landowner's children.

(4) A landowner may build housing for one or more tenants fully engaged in operating the farm However:

(A) not more than 1 tenant house may be built for each 100 acres of land under easement;

720                   (B)   The land on which a tenant house is located must not be  
 721                               subdivided or conveyed to any third party;

722                   (C)   The tenant house must not be conveyed separately from  
 723                               the original parcel of land under the agricultural  
 724                               easement; and

725                   (D)   The square footage of the tenant house must not exceed  
 726                               the square footage of the principal dwelling on the land  
 727                               under the easement.

728           (d)   A landowner who obtains a release of a lot from an agricultural  
 729                       easement must first reimburse the Fund by an amount equal to the  
 730                       pro-rata purchase price the County paid for the agricultural easement.  
 731                       The County must, after receiving the funds, execute and record a  
 732                       partial release in the County land records.

733   **2B-9. Purchase and value of easements.**

734           (a)   The Fund is a special, non-lapsing revolving fund for agricultural land  
 735                       preservation purposes. It consists of:

736                       (1)   the County's share of the State agricultural transfer tax;

737                       (2)   payments received by the County for the repurchase, release,  
 738                               reimbursement, and termination of an agricultural easement;

739                       and



(3) any other funds available to buy agricultural easements under this Article.

(b) The County must use funds from the County's share of the State agricultural transfer tax and any other revolving funds for the purposes of this Article before using any other County funds for these purposes.

(c) The County may buy an agricultural easement to preserve agricultural land in the County. To buy an easement, the County may use:

(1) negotiations;

(2) competitive bidding; or

(3) any other method that is fair and equitable to the landowner and the County.

(d) The purchase price may be based on an appraisal or any other evidence of value under criteria in applicable regulations.

(e) Priority for buying easements must be given to any applicant who meets all of the following criteria:

(1) The proposed purchase price for the agricultural easement does not exceed either the appraised fair market value of the easement or a commercially reasonable value for the easement;

(2) The land is designated in the applicable Master Plan as agricultural;

(3) The land borders a municipality or other developing area; and

(4) Other factors the Executive finds necessary to preserve agricultural land.

(f) The County may agree in writing to buy an agricultural easement if the landowner:

(1) files a good-faith application to the Foundation for the purchase of an agricultural easement by the State; and

(2) accepts a Foundation offer if the price offered by the Foundation is equal to or higher than the price the County offered. If the Foundation does not agree to buy an easement subject to a conditional agreement under this subsection, the County must buy the easement at the price the County offered under the conditional agreement.

(g) In addition to its authority to buy agricultural easements under this Article, the County may accept the donation of an agricultural easement or another interest in property for agricultural land preservation purposes.

**2B-10. Termination and repurchase of easements.**

(a) Process to Terminate and Repurchase an Easement.

(1) A landowner may, in writing, at least 25 years after an agricultural easement bought by the County has been recorded in the County land records, request the County to terminate the agricultural easement. However, a landowner may request termination earlier if the land under easement is later zoned in a manner that precludes agricultural use as a matter of right.

(2) In reviewing a termination request, the County must find that the land is no longer suitable for agriculture and the public interest would be best served by terminating the easement.

(3) The landowner must submit an explanation, in a form acceptable to the County, why profitable farming is no longer feasible on the land under easement.

(4) The APAB must conduct determine if profitable farming is feasible on the land and issue a written recommendation to the Director of Economic Development. In determining whether farming is profitable, the APAB must consider:

(A) if the landowner has implemented a Soil Conservation and Water Quality Plan;

(B) the location of the farm with respect to development; and

799                   (C) any other non-agricultural use that would otherwise impact  
800                               profitability of the farm.

801           (5) After the APAB completes its inquiry, the landowner must be  
802                   advised that an appraisal of the land must be conducted at the  
803                   landowner's expense. The appraisal must consider the current  
804                   fair market value of land and the current fair market value of  
805                   the land encumbered by an agricultural easement. The  
806                   difference between these values must represent the present  
807                   value of the agricultural easement.

808           (6) The landowner must pay the County for the cost of an  
809                   appraisal. The Department must order the appraisal after  
810                   receiving the funds from the landowner.

811           (7) After receiving the completed appraisal and APAB's  
812                   recommendation, the County Council must hold a public  
813                   hearing on the request to terminate the agricultural easement.  
814                   The Department must notify each owner of land adjacent to the  
815                   land where the easement is located of the public hearing.

816           (8) After the public hearing, the Council, by majority vote, must  
817                   recommend to the Executive whether the Executive should  
818                   agree to terminate the easement.

(9) If the Executive agrees to terminate the easement, the landowner must repurchase the easement by paying the present value of the easement as defined in this Section.

(10) The landowner must pay the County within 180 days after the Executive agrees to terminate the easement. After receiving the required payment, the County must prepare, execute, and deliver to the landowner for recording, a Deed of Termination and Release from Easement.

(11) If a request for termination is denied, or if the landowner does not repurchase the easement within 180 days after the Executive agrees to terminate the easement, the landowner must not request termination of the easement for 5 years after the Executive agreed or disagreed to the landowner's last request for termination.

(b) Easement Properties Purchased or Condemned by Government. If the federal government or the State or County buys or condemns land under an agricultural easement for park or any other nonagricultural use, the condemning authority must pay the present value of the easement to the Fund. After receiving the funds, the County must prepare, execute, and deliver to the condemning authority for recording, a Deed of Termination and Release from Easement.

839 **2B-11. Right to sell.**

840 This Article does not restrict the right of a landowner to sell land on  
841 encumbered by a County agricultural easement.

842 **2B-12. Public access.**

843 The purchase of an agricultural easement by the County does not grant the  
844 public any right of access or right to use the land unless the easement expressly  
845 allows public access.

846 **2B-13. Easements on County-owned farmland.**

847 Any productive agricultural land that the County owns must not be sold until  
848 an agricultural easement is recorded against the land to preserve the land for  
849 agricultural use.

850 **2B-14. Recordation.**

851 The County must record each agricultural easement in the County land  
852 records. The recordation of an agricultural easement is not subject to any County  
853 transfer or recordation tax.

854 **2B-15. Executive regulations.**

855 (a) The County Executive must issue regulations under Method 1 to  
856 implement this Article.

857 (b) The regulations must include:

858 (1) method of easement valuation;

(2) method of buying easements;

(3) terms of payment for easements; and

(4) method of ranking offers to purchase easements.

**2B-16. Administration.**

(a) The funds to administer any agricultural land preservation program, including the purchase of agricultural easement, may be paid from the Fund and any other appropriated funds.

(b) The Department of Economic Development must administer this Article and the regulations issued under it.

(c) The Department must issue an annual report that identifies the:

(1) number of agricultural easements bought ;

(2) number of acres preserved by those easements; and

(3) price of each easement.

**ARTICLE 4. ENFORCEMENT OF STATE AND COUNTY**

**AGRICULTURAL EASEMENTS.**

**2B-17. Enforcement of State and County Agricultural Easements**

(a) Any violation of this Chapter or regulations issued under it is a Class A violation. The Department of Permitting Services may issue a citation for any violation of this Chapter or the terms of any agricultural easement.

(b) The Director of Economic Development may take legal action, including seeking injunctive or declaratory relief to prevent any:

(1) subdivision of land under an agricultural easement that violates this Chapter or an agricultural easement; or

(2) transfer of land, including the transfer of lots to or for the landowner or the landowner's children, that violates this Chapter or an agricultural easement.

The Director may also take legal action to recover any funds obtained from any subdivision or land transfer that violates this Chapter or an agricultural easement, plus costs and a reasonable attorney's fee.

(c) If a conflict occurs between this Article and any County law regulating economic activity, noise, or environmental controls, this Article prevails.

(d) If a conflict occurs between the enforcement of any regulation issued under this Article and any applicable County regulation on economic activity, noise, or environmental controls, the regulation issued under this Article prevails.



# LEGISLATIVE REQUEST REPORT

Bill 39-07

## Chapter 2B. Agricultural Land Preservation

**DESCRIPTION:** This bill is intended to repeal Chapter 2B - Agricultural Land Preservation: Section 2B-1 through and including 2B-19 of the Montgomery County Code, and re-enact as Chapter 2B – Agricultural Land Preservation Section 2B-1 through and including 2B-17. This bill authorizes the County to purchase agricultural land preservation easements at both the State and County level.

**PROBLEM:** Extensive changes to the existing Chapter are necessary due to changes in State Law governing State Easement purchases. Given the extensive nature of the changes, repealing and re-enacting Chapter 2B is necessary. Changes to County program are also necessary to bring code up to date as well as to be complimentary to the State program.

### GOALS AND

**OBJECTIVES:** The overall goal and objective of the bill is to bring Chapter 2B up to date with changes to State Law as well as recommend changes to the County program as the means to compliment the State Program.

**COORDINATION:** Department of Economic Development (Agricultural Services), MNCPPC, Department of Permitting Services and State of Maryland, Department of Agriculture.

**FISCAL IMPACT:** Neutral. The repeal and re-enactment of Chapter 2B should not result in any significant fiscal impact as the re-enactment serves to replace dated code.

**ECONOMIC IMPACT:** To be requested

**EVALUATION:** To be requested

### EXPERIENCE

**ELSEWHERE:** State of Maryland, Subtitle 5 of Title 2 of the Agricultural Article of the Annotated Code of Maryland

### SOURCE OF

**INFORMATION:** Department of Economic Development (Agricultural Services), Office of the County Attorney, Maryland Department of Agriculture

### APPLICATION WITHIN

**MUNICIPALITIES:** State Agricultural Easements may not be purchased within incorporated municipalities without the expressed approval of the local approving authority within the incorporated municipality. Lands within the incorporated municipalities are not eligible for inclusion in the County Easement program.

**PENALTIES:** Enforcement of this Chapter is vested with the Department of Permitting Services (DPS)



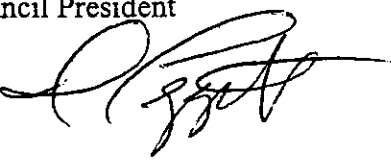
OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

November 26, 2007

TO: Marilyn J. Praisner, County Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Repealing Chapter 2B1-2B-19  
Re-enacting Chapter 2B1 – 2B-17  
Montgomery County Code  
Chapter 2B Agricultural Land Preservation

In April of 2007, the Maryland General Assembly enacted House Bill 1331, which established several new procedures for administering the Agricultural Land Preservation Program in the State. The passage of HB 1331 necessitates that Montgomery County amend Chapter 2B of the Montgomery County Code – Agricultural Land Preservation, in order to be consistent with State law.

Attached is the proposed legislation addressing this matter. Given the extensive nature of the proposed changes, we are recommending that Chapter 2B be repealed and re-enacted. I respectfully request that the County Council schedule the attached bill for a public hearing. Executive branch staff is available to answer any questions from the County Council on this proposed piece of legislation.

Attachment